

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**CORRECTED  
FISCAL NOTE**

**HB 32**

March 4, 2009

**SUMMARY OF BILL:** Expands the “Drug-Free School Zone” to include any sexual offense, any felony involving a deadly weapon, and carjacking committed on school grounds or within 1,000 feet of any public or private school, preschool, child care agency, public library, recreational center or park. Persons who commit these offenses on the grounds of or within 1,000 feet of any preschool, child care agency, public library, recreational center or park shall be subject to fines ranging from a maximum \$10,000 for a Class E felony to a maximum \$100,000 for a Class A felony in addition to any other penalty imposed. If offenses are committed on the grounds of or within 1,000 feet of any elementary, middle or secondary school, offenders are required to serve a mandatory minimum sentence one classification higher than is currently provided for these offenses in addition to the increased fines. Requires offenders to serve at least the minimum sentence for the appropriate range of sentence prior to eligibility for sentence reduction credits. If the offense is currently a Class A felony, the presumptive sentence shall be the maximum within the range.

**ESTIMATED FISCAL IMPACT:**

On March 2, 2009, we issued a fiscal note indicating an *increase in state expenditures of \$1,220,600/Incarceration\**. Based on further review and additional information from the Department of Correction (DOC), the fiscal impact of the bill is as follows:

**(CORRECTED)**

**Increase State Expenditures - \$1,264,900/Incarceration\***

Assumptions:

- The bill deletes Tenn. Code Ann. § 39-17-432 which created the “Drug-Free School Zone,” but includes those drug offenses in the newly created “Crime-Free School Zone.”
- According to DOC, the average post-conviction time served for a Class A felony is 14.86 years; 6.17 years for a Class B felony; 3.59 years for a Class C; 2.43 years for a Class D; and 1.63 years for a Class E.



- The cost per offender at 14.86 years is \$324,636.26 (\$59.80 x 5,428.70 days). The cost per offender at 6.17 years is \$134,727.00 (\$59.80 x 2,252.96 days). The cost per offender at 3.59 years is \$78,426.50 (\$59.80 x 1,311.48 days). The cost per offender at 2.43 years is \$52,995.96 (\$59.80 x 886.22 days). The cost per offender at 1.63 years is \$35,548.11 (\$59.80 x 594.45 days).
- The presumptive sentence for a violation of a Class A drug offense, pursuant to Tenn. Code Ann. § 39-17-417, which occurs within the prohibited zone shall be the maximum within the range (25 years). According to DOC, there has been an average of 34.8 admissions for Class A felony drug offenses in each of the past 10 years. Assuming that 0.5 percent of those offenses were committed within the prohibited zone, the Department estimates one offender every five years will serve an additional 10.14 years (25 years maximum – 14.86 average post-conviction time served) as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur for these Class A felonies due to population growth in this period.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving additional time on their sentence. The annualized time served per conviction is 740.73 days (0.20 annual number of convictions x 3,703.64 additional days served). According to DOC, the average operating cost per offender per day for calendar year 2009 is \$59.80. The annualized cost per conviction is \$44,295.65 (\$59.80 x 740.73 days).
- Due to the small number of offenders, no recidivism discount has been applied for these Class A felony drug offenses.
- Estimate assumes an increase in state and local revenue as a result of the higher fines imposed on the violators of non-drug offenses which occur within the prohibited zones. Based on the Fiscal Review Committee's 2008 study of incarceration costs and fines, collection of fines for felony offenses is negligible. There will not be a significant increase in revenue as a result of the mandatory additional fines for these Class A felony offenses.
- Based on the 10-year average post-conviction time served and the number of convictions per the Administrative Office of the Courts for FY07-08 for the violations under this bill, and assuming that 0.5 percent were committed within 1,000 feet of any public or private school, preschool, child care agency, public library, recreational center or park, a total of 29 offenders would serve a mandatory minimum sentence one classification higher than is currently provided for these offenses.



- DOC estimates one offender per year would receive a Class A under this bill who would currently receive a Class B at 85 percent (10.20 years). The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 4.66 years as a result of this bill. The additional cost of increasing the average sentence length from 10.20 years to 14.86 years is \$101,848.37 (\$324,636.26 - \$222,787.89).
- DOC estimates three offenders per year would receive a Class A under this bill who would currently receive a Class B at 30 percent. According to DOC, 42 percent of offenders will re-offend within three years of their release. A recidivism discount of 42 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (3 offenders x 42% recidivism discount = 1.26 offenders). The maximum cost in the tenth year is based on two offenders (3-1) serving an additional 8.69 years as a result of this bill. The additional cost of increasing the average sentence length from 6.17 years to 14.86 years is \$189,909.26 (\$324,636.26 - \$134,727.00). The total additional operating cost for two offenders is \$379,818.52 (\$189,909.26 x 2).
- DOC estimates eight offenders per year would receive a Class B under this bill who would currently receive a Class C at 30 percent. Population growth of 1.12 percent per year would result in one additional offender in the tenth year. According to DOC, 35 percent of offenders will re-offend within two years of their release. A recidivism discount of 35 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (9 offenders x 35% recidivism discount = 3.15 offenders). The maximum cost in the tenth year is based on six offenders (9-3) serving an additional 2.58 years as a result of this bill. The additional cost of increasing the average sentence length from 3.59 years to 6.17 years is \$56,300.50 (\$134,727.00 - \$78,426.50). The total additional operating cost for six offenders is \$337,803.00 (\$56,300.50 x 6).
- DOC estimates two offenders per year would receive a Class C under this bill who would currently receive a Class D at 30 percent. According to DOC, 21 percent of offenders will re-offend within one year of their release. A recidivism discount of 21 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x 21%



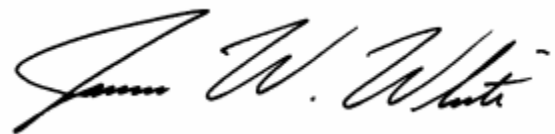
recidivism discount = 0.42 offenders). The maximum cost in the tenth year is based on two offenders (2-0.42) serving an additional 1.16 years as a result of this bill. The additional cost of increasing the average sentence length from 2.43 years to 3.59 years is \$25,430.54 (\$78,426.50 - \$52,995.96). The total additional operating cost for two offenders is \$50,861.08 (\$25,430.54 x 2).

- DOC estimates 14 offenders per year would receive a Class D under this bill who would currently receive a Class E at 30 percent. Population growth of 1.12 percent per year would result in two additional offenders in the tenth year. The maximum cost in the tenth year is based on 16 offenders serving an additional 0.80 years as a result of this bill. The additional cost of increasing the average sentence length from 1.63 years to 2.43 years is \$17,447.85 (\$52,995.96 - \$35,548.11). The total additional operating cost for 16 offenders is \$279,165.60 (\$17,447.85 x 16).
- DOC estimates two offenders per year would receive a Class E felony under this bill who would currently receive a Class A misdemeanor. The total additional operating cost for two offenders is \$71,096.22 (\$35,548.11 x 2).

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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